



*Handwritten signature/initials*

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Fischetti, et al.

Serial No. 10/720,266

Group: 1651

Filed: 11/25/2003

Examiner: Kim, Taeyoon

The Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

**RESPONSE TO OFFICE ACTION**

Sir or Madam:

This is in response to the Office Action dated June 26, 2006.

Please note that all correspondence should go to the address of the undersigned attorney, said address being:

Jonathan E. Grant  
Grant Patent Services  
2107 Hounds Run Place  
Silver Spring, Maryland 20906

A copy of the amended claims is attached.

A Power of Attorney is attached.

Assignments and the assignment cover sheet are attached.

A petition for Extension of Time is attached.

However, applicants take issue with the position that an aerosol is merely an obvious variant of the throat lozenge..

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A throat lozenge exposes the targeted bacteria in the throat to the lytic enzyme for a much longer period of time, and allows for more bacteria to be killed in the throat than an aerosol might. The aerosol has the advantage of being an easy tasteless method of delivery, which may actually reach parts of the throat that are not necessarily exposed to the lozenge.

The lozenge and the aerosol are different routes of administration and a throat lozenge is an oral formulation, whereas an aerosol is used as either nasally or is inhaled into the lung. The aerosol is a topical route of administration, and one of ordinary skill in the art would not transition freely between the two routes. Something that is useful as an aerosol is not necessarily useful as a throat lozenge and vice versa, and one who has ordinary skill in the art would not be inclined to interchange the two. A throat lozenge might not be converted into an aerosol and yet still be as therapeutically effective. A prima facie case of obviousness has not been established.

Additionally, a careful reading of the specification of U.S. Patent No. 5,997,862 will show that the patent was directed to Streptococcus Group A. The lytic enzyme in that patent was directed against specifically listed strains of Streptococcus enumerated in the specification. There was no mention made of *Streptococcus pneumoniae*. Indeed, the whole purpose of these inventions is to target and treat only specific bacteria, so that the "healthy" bacterial flora of the body is not damaged or destroyed, which would in turn allow for opportunistic, pathogenic bacteria to take over.

Also, please note that in EPO 0 510 907 A2, page 2 may have been accidentally left out of the references forwarded to the U.S. PTO.

The application is now in condition for allowance. Please call the undersigned at (301) 603-9071 if you have any questions or comments. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jonathan E. Grant', with a stylized, flowing script.

Jonathan E. Grant

Reg. No. 34,830